

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HUTZLER MANUFACTURING COMPANY, INC. :

Plaintiff, :

-against- :

BRADSHAW INTERNATIONAL, INC., :

Defendant. :

11 Civ. 7211 (PGG) (RLE)

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DECLARATION OF RICHARD S. EHRENHAUS

Richard S. Ehrenhaus declares under the penalties of perjury and pursuant to 28 U.S.C. § 1746:

1. I am an inventor of U.S. Patent No. D592,463 and Director of Product Development of Hutzler Manufacturing Company, Inc. (“Hutzler”).

The Food Saver Line

2. Over the past six years, Hutzler has introduced a line of plastic products designed to store and keep fresh various types of produce. This line of products is called the “Food Saver Line.”

3. Designing these two products was not an easy task. Each product had its own design challenges and the design process itself was an expensive and time-consuming endeavor. A great deal of time and money was spent working with product development consultants and 3D designers/model-makers. Each product went through numerous iterations before arriving at its final design. A similar process was undertaken for each of the products in the Food Saver Line.

4. During the design process, numerous alternative designs were discussed. There was no evidence that a specific design was best for storing produce. The Onion and Garlic Savers could have been designed in a different shape, with different details.

5. In addition, the Onion and Garlic Savers' appearance was not meant solely to signal the contents. If the sole purpose of the appearance of the Onion and Garlic Savers were to signal the contents, this could be achieved in other ways, including labeling the container with the contents, as several manufacturers have done. Attached hereto as Exhibit A are photographs of other manufacturers' onion and garlic containers which are labeled which their contents.

6. Hutzler's Food Saver Line have quickly become the company's most popular products. Sales of products in the Food Saver Line represents approximately 63 percent of the company's sales and, specifically, sales of the Onion and Garlic Savers account for 27 percent of the company's sales.

7. The products in the Food Saver Line are our company's most popular products. Sales of products in the Food Saver Line are responsible for approximately 80 percent of Hutzler's overall sales growth in 2010.

Hutzler Will Suffer Irreparable Harm in the Absence of an Injunction

8. It has recently come to Hutzler's attention that the '114 and '463 Patents are being infringed by Bradshaw International, Inc. ("Bradshaw").

9. Bradshaw sells more than 2,400 different items. In addition, Bradshaw has over 1,000 employees, sells over 100,000,000 pieces per year, and, under the brand Good Cook, has the number one market share for kitchenware in grocery stores. The Keeper Line of products represents a fraction of 1% of their product line. In contrast, Hutzler has fewer than 20

employees. The Saver Line of products is a Hutzler staple and represents approximately 63% of its business.

10. Hutzler has built its reputation on the quality and the uniqueness of its products.

11. Since Bradshaw's entry into the market, consumers' perceptions of Hutzler's quality and uniqueness have drastically changed. Bradshaw's Onion and Garlic Keepers are more cheaply constructed, and are priced approximately 25-50 percent lower than Hutzler's Food Saver Line products. In addition, Hutzler and Bradshaw are direct competitors vying for the business of the same group of customers.

12. Hutzler's sales have drastically dropped since Bradshaw's entry into the marketplace. Defendant's distribution of the Onion and Garlic Keepers stalled and reversed Hutzler's sales momentum, causing the loss of at least eleven major accounts, and has possibly permanently displaced Hutzler's products in supermarkets. Hutzler received direct notice from customers that it lost at least three accounts to Bradshaw. Attached hereto as Exhibit B are emails from customers notifying Hutzler that they would no longer be purchasing containers from Hutzler, but from Bradshaw instead.

13. Hutzler has and will suffer price erosion as a result of Bradshaw's lower-priced "knock-off" Keepers. Hutzler has already needed to reduce its prices as a result of Bradshaw's knock-off products. Attached hereto as Exhibit C is an email from Hutzler to a customer agreeing to drop Hutzler's prices in order to compete with Bradshaw. Price is a critical factor in the determination of which produce storage product to buy. Since Bradshaw's entry into the market in the beginning of 2011, Hutzler's sales for the Onion and Garlic Savers have decreased by 46%. No other competitors have entered the market during this time.

14. Bradshaw's actions will encourage knock-off products. Bradshaw is one of the two largest players in the distribution and sales of housewares to supermarket and mass market retailers. Bradshaw's success in copying Hutzler's patents will only spur other manufacturers into also flooding the market with knock-off products.

15. Hutzler's loss of its position as an industry leader and loss of its advantage as the pioneer in the field has also irreparably harmed Hutzler.

16. As a result of Bradshaw's infringement, Hutzler has lost market share and customers. If Bradshaw's infringement is allowed to continue, Hutzler will continue to lose market share and customers and its entire business may be jeopardized.

17. Further, without an injunction, Hutzler will be forced to compete with its own patented products and will be deprived of its right to exclude a direct competitor.

18. Bradshaw has also misappropriated Hutzler's entire line of Food Saver Products, resulting in Bradshaw having a commercial advantage over Hutzler. In addition, the similarity between the Food Saver and Food Keeper Lines is beyond obvious and defies coincidence. Bradshaw chose the exact same five fruits and vegetable containers from the Hutzler Food Saver Line as containers for Bradshaw's Food Keeper Line. All of the containers are essentially the same size, shape, and color, and operate to preserve produce. In addition, Hutzler and Bradshaw are direct competitors. Because the services and products provided by Hutzler and Bradshaw are essentially the same, consumers are likely to confuse the origin of the products. Finally, Hutzler and Bradshaw products have been commingled in supermarkets, therefore leading to a confusion as to the origin of goods. Attached hereto as Exhibit D are photographs of the Hutzler and Bradshaw products commingled in supermarkets.

19. If Bradshaw is allowed to continue selling the infringing Keeper Line, Hutzler will be irreparably harmed

Canaan, CT
November 18, 2011

I declare under penalty of perjury that
the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Richard Ehrenhaus", with a horizontal line extending from the end of the signature.

Richard S. Ehrenhaus